

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL GORE,

Plaintiff,

v.

SUPERINTENDENT NEWLIN et al.,,

Defendant.

Case No. C05-5841 FDB

ORDER ADOPTING REPORT AND
RECOMMENDATION DENYING
MOTION TO DISMISS FOR
FAILURE TO PERFECT SERVICE

This matter comes before the Court on the Report and Recommendation of the Magistrate Judge that Defendant's motion to dismiss for failure to perfect service be denied. Defendant has not filed objection to the Magistrate Judge's recommendation. As detailed by the Magistrate Judge, the United States Government is responsible for service in this in forma pauperis proceeding. See, 28 U.S.C. § 1915(d). No fault of the alleged failure to properly perfect service rests the Plaintiff. Additionally, Defendant had actual notice of this action and had an attorney enter an appearance on his behalf without indicating counsel was appearing specially or that service was being contested. Accordingly, not only has Defendant waived any argument regarding improper service, there has been no prejudice to Defendant from any alleged defect in service, whereas Plaintiff would suffer substantial prejudice if the matter were dismissed.

ORDER - 1


1 The Court, having reviewed the Motion to Dismiss, the Report and Recommendation of
2 Magistrate Judge J. Kelly Arnold, and the remaining record, does hereby find and Order:

3 (1) The Court adopts the Report and Recommendation;

4 (2) The motion to dismiss for failure to serve summons and complaint [Dkt # 19] is
5 **DENIED;**

6 (3) The Clerk is directed to send copies of this Order to Plaintiff, counsel for Defendants
7 and to the Hon. J. Kelly Arnold

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9 DATED this 2nd day of October, 2006.

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13 FRANKLIN D. BURGESS
14 UNITED STATES DISTRICT JUDGE
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